U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 2 6 2007

SRC 06 064 52116

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Laura Dedrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

[redacted]
Page 2

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment within the field of civil engineering as a principal naval architect. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief. Significantly, the director's decision explains the type of assertions and qualifications that would not warrant a waiver of the alien employment certification without explaining why the evidence submitted in this case is insufficient. As the director has not identified any specific deficiencies in the record other than to assert that the petitioner does not meet the legal standard for a national interest waiver, it is difficult for the petitioner to file a meaningful appeal and for this office to evaluate the validity of the director's bases for denial. Ultimately, the director did not identify any specific shortcomings and we are unable to find any deficiency that undermines the petitioner's claim to eligibility.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Civil Engineering from the University of Houston. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies

as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The director did not contest that the petitioner works in an area of intrinsic merit, engineering, or that the proposed benefits of his work, improved transportation and stability of offshore oil platforms, would be national in scope. Rather, the director concluded that "the issue in this case is not whether hydrodynamics and ocean engineering is in the national interest, but whether the [petitioner], to a greater extent than U.S. workers having the same qualifications, plays a significant role."

We concur with the director that the importance of the petitioner's area of research alone is insufficient to warrant a waiver of the alien employment certification process in the national interest.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218.

The director then included a "qualifications discussion." In this section, the director reiterated that simply qualifying for the job is insufficient. The director then concluded that the petitioner had demonstrated that he is a competent researcher whose skills and abilities are of value to his employer but had not established that a waiver of the job offer was warranted in the national interest because simply playing an important role in hydrodynamics and ocean engineering is insufficient.

We concur with the director that it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

More specifically, at issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner received his Ph.D. in Civil Engineering at the University of Houston in 2001. The petitioner then worked as a Principal Naval Architect for ABB Lummus Global from June 2001 to April 2004. In 2004, the petitioner began working as a Principal Naval Architect for Sea Engineering, where he remained when the petition was filed in December 2005.

[redacted], a member of the petitioner's thesis committee at the University of Houston, discusses the petitioner's doctoral research involving three-dimensional simulation of fully nonlinear wave overtopping and inundation on floating platforms in time domain. The petitioner developed a new boundary condition that he was able to apply to prevent significant wave reflection on the sidewalls of the numerical wave tank, verifying his model against experimental results. [redacted] explains the importance of using numerical wave tanks (NWTs) as an alternative to physical wave tanks and asserts that the petitioner's work is a significant advance in NWT modeling. Specifically, the petitioner solved "the estimation of the effectiveness of semi-porous caisson breakwater containing two fluid-filled chambers" by introducing a damping phenomenon that had never been previously considered. The petitioner also solved the previously unsolved problem of diffraction of linear waves by a uniform vertical cylinder with cosine-type radial perturbations. [redacted] asserts that this work was published and "recognized by the reviewers as an [sic] excellent research."

[redacted]
Page 3

According to [redacted] a staff engineer with the ConocoPhillips Oil Company, ConocoPhillips contracted its Magnolia Tension Leg Platform (TLP) project to ABB Lummus where the petitioner was a member of the Naval Architecture Group supporting the project. The petitioner was involved in nine "highly technical activities on the project." [redacted] praises the petitioner's skills in analyzing the complex and demanding nonlinear simulation of platform and vessel transportation from Korea to the Gulf of Mexico. As a result of his work on the project the petitioner was recognized for saving $1.5 million through selection of a cost efficient transport vessel. [redacted] a senior staff engineer with ConocoPhillips, elaborates that the petitioner demonstrated "that a cheap and small vessel is capable of safely transporting the hull and the use of a larger vessel is not economical." [redacted] notes that the platform was safely installed and is now the deepest TLP in the world, with a water depth of 4,700 feet.

[redacted] further states:

> [The petitioner] also developed and performed a unique technique to simulate the nonlinear slamming and submergence of the Platform during transportation. His innovative analysis resulted in eliminating the potential damage and capsizing of the Platform during transportation due to vessel motion and wave interaction. As a byproduct of this effort, he developed a new long-term analysis approach that is considered the state-of-the-art and a big improvement and valuable contribution to the industry.

[redacted] provides similar information, asserting that the general practice in the industry had been to use predicted short-term structural response, which could underestimate the structural response in the longer term. The petitioner "has been able to advance the industry by introducing the long-term effect on the response predictions to more accurately predict the structural response and consequently improve the structural safety on the long run."

[redacted] President of ODL Services, Inc., asserts that he reviewed the petitioner's procedures, calculations and proposals for ExxonMobile's project to install the first TLP in West Africa, [redacted] The hull of Kizomba A was built in Korea and transported to Holland where it was integrated with the deck structure. The platform was then transported to West Africa. The petitioner "was responsible for evaluating whether or not the hull would be damaged during hull transportation activities." [redacted] continues:

> The high level of nonlinearity involved made it difficult for past researchers to reach accurate analytical solutions. Despite such challenges, [the petitioner] was able to develop a unique non-linear analytical tool that predicted wave submergence, vessel motion, wave impact area and finally wave impact force. The inertial loads and wave forces or the transportation environment were then added to determine if the hull was structurally damaged and to design the tie down structures. Finally, this new analytical tool was validated by comparing analytical predictions to data measured in wave basin model test of the transportation. As the result of [the petitioner's]

analytical program and work in area of hull transportation, important decisions were made regarding the hull's structural integrity and the need to use restraints.

[redacted], Vice President of Sea Engineering, asserts that he was the petitioner's departmental manager at ABB Lummus and recruited the petitioner to join him at Sea Engineering when he moved to that company. [redacted] asserts that ExxonMobil, a client of ABB Lummus, selected the petitioner to be the responsible engineer for the installation of a TLP in West Africa. The petitioner "did a very impressive job" on the project and, after moving to Sea Engineering, was once again selected to support the installation of the second TLP in West Africa, [redacted] notes that, while working for these private companies, the petitioner published his work on simulating the dry transportation of an offshore structure in 2004. The record reflects that the petitioner has also continued to present his work after receiving his Ph.D.

As stated above, [redacted] asserts that the petitioner was formally recognized by [redacted] In support of this assertion, the petitioner submits three letters of recognition issued to the petitioner in 2001 and 2002 praising his work on the Magnolia and Kizomba projects. The letters confirm that the petitioner's approach saved $1.5 million on the Magnolia project.

[redacted], Director of ReneWave, Ltd., indicates that his company deals with the problem of extracting energy from ocean waves. [redacted] asserts that the "problem of wave diffraction and the associated hydrodynamic wave loading on cookie cutter structures has been one of the most challenging problems to be simulated analytically." [redacted] further explains that the petitioner introduced the formulation of the boundary-value problem to this analysis, which was "key" in [redacted] own research.

The petitioner also submitted letters from engineers in Taiwan, France and Germany who claim to have learned of the petitioner's work through his publications or presentations and favorably evaluate this work.

It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. Moreover, the petitioner is an engineer. It is his job to simulate the transport of TLPs and determine the safest and most efficient method for transportation. The mere fact that he performed his duties competently and satisfied his employer and clients is insufficient. That said, the above letters provide specific examples of how the petitioner has impacted the field as a whole. The director does not acknowledge the above evidence or explain why the testimonials, including testimonials from international professionals who were previously aware of the petitioner's work in the field and a testimonial from an independent professional who has applied the petitioner's methods, are insufficient. We are satisfied that these letters, in addition to other evidence of record, satisfactorily establish the petitioner's eligibility in this matter.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien.

That being said, the above testimony, and further testimony in the record, establishes that the civil engineering community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.